35TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 50.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1858.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. C. C. 121.]

The Committee on Claims to whom was referred the report of the Court of Claims in the case of Sturgess, Bennett & Co., report:

That between the years 1847 and 1851 the claimants imported a quantity of brandy and whiskey in casks. The quantity expressed in the invoices exceeded that which was found to be contained in the casks, by the gauger's return. Duties were levied and paid upon the value which appeared by the invoices to have been paid for the quantity of liquor put into the casks at the place where it was purchased or shipped.

The number of casks of liquor imported was 3,123, the rate of duty one hundred per cent. The deficiency between the quantity purchased and the return of the gauger here cost $2,068, and this sum they claim should be repaid as overpaid duties.

Allowance appears to have been made on 373 casks of the liquor when it was imported, amounting to $219. For what cause or reason this allowance was made does not appear.

The committee do not deem it necessary to be more exact in the statement of the particulars, nor do they propose to examine the decisions and authorities referred to and relied upon to support the claim, and set out in the petition of the claimants, and in the brief of their counsel, or those embraced in the opinions delivered in favor of and against the claim by the members of the Court of Claims.

These relate chiefly to the question of the necessity of protest, and it is sufficient to say that the committee would not refuse to recommend relief where there was, in their judgment, a just claim upon the government, because no protest was made at the time the duties were paid; for we hold that this government is able, and should be willing, to pay all just claims upon it, and should not be deterred from examining and recommending the payment of what we believed justly due by their number or magnitude.

On the other hand, the committee would not recommend any new act of legislation to pay what they believed to be unjust claims, in consequence of, or in deference to, any opinions which they deemed unsound, although the opinions might have been given by a coördinate department of this government.

The claim before us presents two questions for examination:

First. Were the liquors upon which the duties were paid actually imported? and,

Second. Was more money paid to the government by the claimants than the law (existing at the time) required them to pay, upon entering the goods for consumption?

Upon the first question there is a difference in the statements of the parties. The claimants aver that they paid duties upon the entire quantity stated in the invoices.

The solicitor for the government says that from the time the act of July, 1846, took effect, down to July, 1851, the Secretary of the Treasury instructed the collectors of the customs to make allowances, and that they did make an allowance of two per cent. upon all liquors imported during that time, as an allowance for "*leakage*," under the act of March 2, 1799.

The Court of Claims do not (upon the evidence) decide which of the two statements is correct. The committee have no other evidence before them, and will, therefore, state what they believe would be the effect in each of the cases stated.

It is admitted that the deficiency in the quantity was not caused by "stress of weather or accident," but was the ordinary waste incident to the voyage, and to the lapse of time between the gauging at the place of purchase and the gauging in this country to determine the quantity then in the casks.

It is obvious that if the allowance of two per cent. was made, as is said, under the instructions of the Secretary of the Treasury, such allowance would have been conclusive, (if the amount of the duties still depended, as in former laws, upon the *quantity* of this description of liquors imported;) and whether the waste was actually more or less than the two per cent. would be immaterial,

The section of the act referred to is as follows:

ACT OF MARCH 2, 1799.

"AN ACT to regulate the collection of duties on imports and tonnage."

SECTION 59. "That there be an allowance of two per cent. for leakage on the quantity which shall appear by the gauge to be contained in any cask of liquors subject to duty by the gallon; and ten per cent. on all beer, ale, and porter, in bottles; and five per cent. on all other liquors in bottles; to be deducted from the invoice quantity, in lieu of breakage; or it shall be lawful to compute the duties on the actual quantity, to be ascertained by tale, at the option of the importer, to be made at the time of entry."

This section requires the capacity of the cask to be ascertained by the gauger, and from this quantity, thus shown to be its contents, was to be deducted the two per cent. for the loss by leakage.

To construe this provision, as must be done to create a claim for a return of overpaid duties, if the deficiency exceded two per cent., the provisions for gauging the cask must be construed to mean that the gauger was to measure the liquor therein, and then deduct the two per cent. from what was actually found to be in the cask, instead of an allowance for what had leaked out of it, as is expressly declared to be its intent, and thus make the entire provision an absurdity.

Having considered what would be the result if the facts are correctly given by the solicitor for the government, we will examine the

claim upon the theory of the claimants, supposing the facts to be as set out by them.

They say that duties were paid on the entire quantity expressed in the invoices, and that the gauger's return showed a less quantity, and that they have been thus obliged to pay upon what was not imported by them, and claim for the amount thus overpaid.

It appears from what has been stated, that the deficiency upon which they claim is about a gallon in each cask imported, and they rely solely upon this circumstance to show that they have paid duties on liquor which was not imported. They should certainly establish the fact of overpaid duties upon their own theory of their claims, before they can expect Congress to pass a special act for their relief.

The greater part of these importations were warehoused, and the duties paid when the liquor was taken out for consumption. The claimants do not show at what periods the casks were gauged in the two countries.

It must be plain to any one of common observation that if a cask was purchased in France and a hundred gallons of brandy put into it, that after it had remained six months or a year, there could not be as much drawn out of it. If the cask was brought to this country and measured here, the fact that there was a gallon less than was first put in would not prove that the liquor had leaked out and was not imported, because it is manifest that the wood of which the cask was made would absorb more than the quantity claimed in this case not to have been imported. There are other causes—such as the temperature and other conditions of the atmosphere at the times when the gauging is performed—which are said to cause far greater variations in the apparent quantity than was shown in the cases we are considering. The liquor, therefore, might all come here, and the most that can be made of the facts stated and relied upon as the basis of this claim is, that it could not quite all be drawn out of the casks to be sold, although it was all put in them and remained in them when they were imported.

The second, and main question is: was more money paid than the law required the claimants to pay to the government when the goods were entered for consumption? This is not embarrassed by any disagreement about the facts between the parties, and rests entirely upon the construction of the law.

The law required the duties to be assessed upon the true value of the liquors at the port of entry; but the Secretary of the Treasury instructed the collectors to value at the place of exportation or shipment, or to commence with the cost at the place of production, and make certain specified additions to that cost, for various expenses prescribed in the instructions of the Secretary of the Treasury, until the goods were on shipboard, when all further expenses were directed not to be added.

In all the instances of importation under review it was upon the *value so made up* that the duties were levied and paid. No complaint was then made, or is *now made*, that the *value* was *too high* or *too low*, by either party. It was upon *this value* alone that any duties were payable under these instructions, and there was neither necessity nor reason for any gauging or measuring at all, except so far as it might

aid in determining the value, or in preventing under valuation; for the law declared that "under no circumstances shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding."

This, it seems to us, disposes of all the grounds upon which the claimants have placed their claim for a return of overpaid duties; and shows clearly that there is no reason for *special legislation for their relief;* and with such a declaration we would conclude this report, but for the facts disclosed by this investigation, which appear to require some notice, as showing the very great losses to which the revenue is exposed by the various decisions referred to in the papers before us, and the great expense incurred in the investigation of the claims these decisions have created.

The first instructions issued by the Secretary of the Treasury to the collectors of the customs for the execution of the law of the 30th July, 1846, and the judicial decisions upon questions arising under the provisions of this law, are of so marked a character and disclose so clearly the source and nature of some of the difficulties now experienced, that with all proper respect for the high character of those through whose instrumentality these difficulties have been occasioned, we deem it proper to call the attention of the Senate to the character and extent of them.

We may here say, that the mode of levying the duties, (upon the kinds of merchandise under examination,) was by the tariff of 1846 altered from what was called specific duties to certain rates per cent., to be levied upon the dutiable value of the importations. This *change* from the forms to which we had become accustomed by long experience we, regard as the cause of our present difficulties respecting imports of this description; while the instructions and the opinions and decisions before referred to have occasioned difficulties not only in reference to this class of imports, but seriously affecting the revenue derived from all other imported merchandise subject to duty, greatly to the injury of the government, by lessening its receipts and increasing its expenditures.

The reasons for and against this change in the mode of assessing duties need not now be examined further than to say, that those who preferred the old mode, and the advocates of the new, aimed at levying the duties upon the value of the goods at the place of importation, and not at the place from whence they were imported. One imposed a fixed sum, predicated upon their experience of what that value had been, and the other fixed upon a rate upon what should be ascertained in each case to be the value at the place of importation, as in the act of 1846, and a resort to the value in the foreign market, or place of production, was taken as the commencement of a process by which, when carried through, the *value* at the port of entry could be determined. To show that this view of the law of 1846 is the only correct one, we submit the following extracts therefrom:

TARIFF OF 1846.

Statutes at Large, vol. 9, page 43:

"SEC. 8. And be it further enacted, that, it shall be lawful for the owner, consignee or agent of imports which have been actually pur-

chased, on entry of the same, to make such addition in the entry to the cost or value given in the invoice as, in his opinion, may raise the same to the true market value of such imports in the principal markets of the country whence the importations shall have been made, or in which the goods imported shall have been originally manufactured or produced, as the case may be; and to add thereto all costs and charges which, under existing laws, would form part of the true value at the port where the same may be entered, upon which the duties shall be assessed. And it shall be the duty of the collector within whose district the same may be imported or entered to cause the dutiable value of such imports to be appraised, estimated and ascertained in accordance with the provisions of existing laws; and if the appraised value thereof shall exceed by ten per centum or more the value so declared on the entry, then, in addition to the duties imposed by law on the same, there shall be levied, collected and paid a duty of twenty per centum ad valorum on such appraised value: *Provided, nevertheless,* That under no circumstances shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding."

This section of the act of 1846 requires the dutiable value to be ascertained "in accordance with the provisions of existing laws." The provisions of law existing, and here referred to, are as follows:

TARIFF OF 1842.

The 16th section of the act of 1842 (5 Stat., 563) provides that "it shall be the duty of the collector within whose district" [merchandise subject to *ad valorem duties*] "shall be imported or entered to cause the actual market value or wholesale price thereof, at the time when purchased, in the principal markets of the country from which the same shall have been imported into the United States, or of the yards, parcels, or quantities, as the case may be, to be appraised, estimated, and ascertained, and to such value or price, to be ascertained in the manner provided in this act, shall be added all costs and charges, except insurance, and including, in every case, a charge for commissions at the usual rates, as the true value at the port where the same may be entered, upon which duties shall be assessed."

And the 26th section (page 566) provides "that all provisions of any former law inconsistent with this act shall be, and the same are hereby, repealed."

There can be no doubt of the import of this language, and the instructions from the Secretary of the Treasury sustain it, with the omission of one important element of cost or value of goods at the port where they are entered; to show this we insert the following extracts from those instructions:

"The additions authorized by the 8th section to be made by the owner, consignee, or agent, 'in the entry to the cost or value given in the invoice,' where goods have been actually purchased, as also the costs and charges referred to, must be added at the time of making entry of the goods, and cannot be done subsequently. This privilege is obviously intended to afford the party an opportunity to relieve himself from the additional duty imposed by this section, where the

appraised value shall exceed, by ten per centum or more, the value 'so declared on the entry;' consequently, any such additions made, as aforesaid, are not obligatory upon, or to control the judgment of, the appraisers in estimating the value of the goods in question, who are, nevertheless, required to make appraisement of the same, in conformity with the provisions of existing laws.

"The principle upon which the appraisement is based is this: that the actual value of articles on shipboard at the last place of shipment to the United States, including all preceding expenses, duties, costs, charges, and transportation, *is the foreign value upon which the duty is to be assessed.* The costs and charges that are to be embraced in fixing the valuation, over and above the value of the article at the place of growth, production, or manufacture, are:

"1st. The transportation, shipment, and transhipment, with all the expenses included, from the place of growth, production, or manufacture, whether by land or water carriage, to the vessel in which shipment is made to the United States. Included in these estimates is the value of the sack, package, box, crate, hogshead, barrel, bale, cask, can, and covering of all kinds, bottles, jars, vessels, and demijohns.

"2d. Commission at the usual rate, but in no case less than two and a half per cent., and where there is a distinct brokerage, that to be added.

"3d. Export duties, including such duties at all places from the place of growth, production, or manufacture, to the first place of shipment to the United States.

"4th. Cost of placing cargoes on board ship, including drayage, labor, bill of lading, lighterage, town dues and shipping charges, dock and wharf dues, and all charges to place the articles on shipboard.

"Discounts are never to be allowed in any case, except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser.

"The freight from the place of shipment to the United States is not to be included in the valuation, and insurance is also excluded by law."

A careful examination of the provisions of the law and of the instructions just recited disclose two important changes made in the law by the Secretary of the Treasury: first, the one which declares that it is the *foreign value* upon which the duty is to be assessed; and, secondly, and naturally resulting from the first, that "the freight from the place of shipment to the United States is not to be included in the valuation, and insurance is also excluded by law."

The 16th section of the act of 1842 provides that after the foreign cost or value shall be ascertained there "shall be added *all costs and charges, except insurance*, and including, in every case, a charge for commissions at the usual rates, as the *true value* at the *port* where the same may be entered, upon which duties shall be assessed."

It is difficult to see how it could be supposed that the language here used, that all "costs and charges" should be included in the dutiable value at the port of entry in the United States, should mean to exclude the freight of merchandise upon the voyage of importation, and

equally so to conceive how the words "except *insurance*" should include the freight. If the expenses upon the voyage as among the costs and charges had not been in contemplation, why should insurance, which is one of those expenses, have been excepted, and not be allowed to form an element or increment of the dutiable value?

No one doubts the insurance here spoken of was the insurance upon the goods from the foreign port to the port of entry in the United States, which is usually included under the terms "costs and charges," and the exception was probably made as an inducement to importers to insure their goods; but whatever the motive, the exception of this item only from the costs and charges, by all the rules of construction, would clearly show that all other items of expense, such as freight, were to be included in estimating the value of goods at the port of entry.

Important and clear as the language and intention of the law appear to us, it was obviously not so to the Secretary, for he says "the freight from the last place of shipment to the United States is not to be included in the valuation, and insurance is ALSO excluded by law." He must have understood that both freight and insurance were included in the terms "costs and charges," by their common acceptation among commercial and legal men, and hence it was necessary, to justify the exclusion of the freight from the valuation, to use this form of expression, after excluding freight, "and insurance, which is *also* excluded by law," an adroit way of saying that a law which expressly excepts but *one* thing actually excepts *two*, and thus embrace, with a *trifling* item of cost which was excepted in terms, an *important* item which was *not* excepted at all, from the additions to be made to the value of goods abroad in determining their dutiable value at the port of entry.

There is to us a significance in the character of these instructions as to charges to be added to the first cost; they are mentioned first in general terms, and then in tedious and minute detail of twenty or thirty specific items, which, if of consequence enough to be mentioned at all, would threaten to exceed the original cost of the goods, and then to close with an order not to include the freight, which was more important than all the others combined.

But one other reference to these instructions is deemed necessary to a full understanding of their bearing upon the class of cases which we are now investigating, which is to the 8th section of the act of 1846, viz: This section further provides "That, under no circumstances, shall the duty be assessed upon an amount less than the invoice value, any law of Congress to the contrary notwithstanding." This part of the law was, it seems, supposed by the Secretary to refer to former practices of making allowances. We think it refers to both "*discounts* and *allowances*." In reference to making allowances, the Secretary begins with the precise word with which his extract from the law ended, going on to say: "*Notwithstanding* the very comprehensive language of this proviso, it is believed that Congress could not have intended to abolish all the allowances made under previous laws for deficiencies and for damages occurring during the voyage of importation." He then goes on to guard against too great allowances, &c. As we have already said, we think the proviso forbids all discounts

and allowances which would reduce the value at the port of entry below the invoice value; but the Secretary says, in his instructions, "discounts are never to be allowed in any case, except on articles where it has been the uniform and established usage heretofore, and never more than the actual discount positively known to the appraiser."

From these quotations it is plain that the principal additions which the law required to be made to the foreign cost of merchandise, to bring it up to its dutiable value at the port of entry, are counteracted by these instructions, and its most clear and "comprehensive language" (preventing discounts and allowances being made, so as to reduce the amount upon which the duty shall be assessed below the foreign cost or invoice value) is also rendered inoperative; and this, too, because the Secretary did not believe Congress intended what it said in the law, of which common report gives him the paternity. The effect of these alterations of the clear and obvious provisions of the law are seen in the cases we are considering, in an allowance which reduced the invoice value and the amount of duties, as already stated, two hundred and nineteen dollars. But this is trifling compared with the omission of the costs and charges required by the express provisions of the law. We have no means of knowing the extent of the loss to the revenue from these omissions, but have made inquiry of an importer of brandy from the same place, and in the same year that the largest of the importations under review were made, and learn that the whole costs and charges added by him to the brandy he imported, in addition to the invoice value upon which he paid duty, was thirty cents a gallon, at the port of New York. His brandy w invoiced at nearly double the cost of these we are now considering but in so far as the charge of freight (the largest item) has influenc upon the cost, it would be as much on the low as on the higher price article; but making no allowance for this, and reducing all the costs and charges in proportion to the reduced cost of the article, it would make the costs and charges in these cases about fifteen cents per gallon upon these importations. The number of casks was 3,123, and, by the actual gauge at the port of entry, contained 138,328 gallons, which, at fifteen cents per gallon for costs and charges of importation, &c., would amount to $20,749 20, and the duty being 100 per cent., would amount to the same sum, which should have been paid in addition to the $84,908 which was paid by the claimants. Thus, if the whole question were still an open one between the importers and the government, it is apparent that, instead of the claimants having a claim for overpaid duties of two thousand dollars, there would be found to be due from them more than ten times that amount to the government under a just construction and execution of the law w existed during all the time the liquors were being imported. T are many cases where the construction of the law which has pre would show still greater proportional losses to the revenues of th ernment, and these losses are still pressing upon its revenues prolonging its financial difficulties to the extent of several millio annually; and, in the judgment of the committee, demand an ear provisionof law to prevent their continuance.

The committee herewith return the papers with the bill referred to them, with a recommendation that it do not pass.